

**BEFORE THE
NATURAL RESOURCES COMMISSION
OF THE
STATE OF INDIANA**

IN THE MATTER OF:

AMENDS 312 IAC 15, WHICH)	Administrative Cause
PROVIDES STANDARDS FOR FOREST)	Number: 14-098F
AND RESOURCE MANAGEMENT)	
)	LSA Document #14-294(F)

**REPORT ON RULE PROCESSING, PUBLIC HEARING, AND HEARING OFFICER
ANALYSES WITH RECOMMENDATIONS REGARDING FINAL ADOPTION**

1. RULE PROCESSING

For consideration as to final action, are the proposed amendments to 312 IAC 15, which provides minimum standards of good timber management for property that is classified as forest plantation or native forest land under IC 6-1.1-6.

The Natural Resources Commission (the “Commission”) gave preliminary adoption to the proposed amendments on July 15, 2014, as reported in the pertinent portions of the meeting minutes:

Consideration of request for preliminary adoption of amendments to 312 IAC 15, which provides standards of good forest and resource management, to reflect the merging of the Classified Forest Program and Classified Wildlife Habitat Program; Administrative Cause No. 14-098F

John Seifert, State Forester with the Division of Forestry, presented this item. Seifert said the Classified Forest Program and Classified Wildlife Habitat Program have been in existence since the early 1920s. The programs were established to help landowners with the cost of managing land, particularly regarding forests. In 2006, the General Assembly merged the Classified Forest Program with the Classified Wildlife Habitat Program into what is now entitled the “Classified Forest and Wildlands Program”. Since the merger, there has been a significant increase in the number of acres in the program. The number of landowners has grown significantly. “Of the amount of acres that’s going into the program annually since 1974, we are on track to reach approximately 20,000 acres, which is a significant number of parcels—probably in the range of 300 to 400. The Division of Forestry’s goal is to provide assistance, and promote landowner interest in managing the resource whether it’s wetlands, wildlife or forest.”

Seifert said the Division does a lot of referral work with the private sector. “We’re trying to embrace technology. We actually introduced this idea back when the two programs merged in 2005, 2006 to use

GPS and GIS technology to allow these landowners to enroll or re-do their classifications.” Approximately 10% of enrolled parcels are modified on an annual basis. If a landowner wants to add five acres to a 100-acre tract, the landowner would have to resurvey the entire parcel, which may cost approximately \$400.

Seifert explained the proposed amendments would reflect the combined Classified Forest and Classified Wildlife Habitat Program and add an alternative parcel description method for lands being enrolled in the program. “We’ve met with the Surveyor’s Association when this change was going through the Legislature, and they really had no concerns other than they did not want us to be in a position to describe parcels.... All we want is to be able to describe parcels from assessment evaluations.”

The Chair reflected, “It’s a great opportunity for land owners to make some good deposits and have the benefit of good expertise.”

Thomas Easterly moved to approve preliminary adoption of amendments to 312 IAC 15. R.T. Green seconded the motion. Upon a voice vote, the motion carried.

Executive Order 13-03 required agencies to “suspend rulemaking action on any proposed rules for which a notice of intent to adopt a rule...was not submitted to the office of the Indiana *Register* on or before January 14, 2013.” Additional compliance provisions were included in Financial Management Circular 2013-01. Cameron Clark, Director of the Indiana Department of Natural Resources (“DNR”) submitted to the Office of Management and Budget (“OMB”) requests for “exemption to the suspension of rulemaking action under the provisions of Executive Order 13-03”. In a letter dated April 22, 2014, Christopher D. Atkins, Director, Office of Management and Budget, wrote that DNR’s “request qualifies for an exception under Section 6(b) of Executive Order 13-03. Therefore, DNR may proceed”.

The “Notice of Intent” to adopt the rule amendments was published in the Indiana *Register* at 20140730-IR-312140294NIA on July 30, 2014. The notice identified Brenda Huter, with the Division of Forestry, as the “small business regulatory coordinator” for purposes of IC 4-22-2-28.1.

The Commission caused the information required by IC 4-22-2-22.5 to be included in the rulemaking docket maintained on its website at <http://www.in.gov/nrc/2377.htm>. The rulemaking docket was also updated periodically as the rule adoption progressed.

As specified by the Executive Order that then applied, proposed fiscal analyses of the rule proposal, and the rule standards analysis under IC 4-22-2-19.5 were submitted, along with a copy of the proposed rule language and a copy of the posted Notice of Intent, to OMB and the Legislative Council on August 4, 2014. In a letter dated August 27, 2014, Brian E. Bailey,

Director of the State Budget Agency, stated, in part, “After reviewing the proposed rule, the recommendation of the State Budget Agency is that the rule changes be approved.”

On September 9, 2014, the Division of Hearings submitted the rule proposal to the Legislative Services Agency (“LSA”), along with the “Statement Concerning Rules Affecting Small Business” (also known as the “Economic Impact Statement”). The Notice of Public Hearing and the Justification Statement (IC 4-22-2-24(d)(3)) were submitted to LSA on September 10, 2014. On September 17, 2014, the following were posted to the *Indiana Register*: the text of the proposed rule (20140917-IR-312140294PRA); the notice of public hearing (20140917-IR-312140294PHA); and the Economic Impact Statement (20140917-IR-312140294EIA). Following receipt from LSA of an “Authorization to Proceed”, the Division of Hearings caused Notice of Public Hearing to be published on September 24, 2014 in the *Indianapolis Daily Star*, a newspaper of general circulation in Marion County, Indiana.

The Statement Concerning Rules Affecting Small Businesses (the “EIS”), as required under IC 4-22-2.1-5, and submitted by the Small Business Regulatory Coordinator, indicates:

Economic Impact Statement
LSA Document #14-294

IC 4-22-2.1-5 Statement Concerning Rules Affecting Small Businesses

Estimated Number of Small Businesses Subject to this Rule:

There are 1,021 organizations (partnerships, companies, and corporations), which have land enrolled in the Classified Forest & Wildlands Program. 375 of the organizations contain "farm" in their name. The Division of Forestry has no way to determine how many of the 1,021 organizations are a "small business" as defined by [IC 5-28-2-6](#).

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

Small businesses will not incur any costs for annual reporting, record keeping or other administrative activities as a result of the proposed rule amendments.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

There is no economic impact on small business to comply.

Justification Statement of Requirement or Cost:

The proposed rule amendments would not impose requirements or costs.

Regulatory Flexibility Analysis of Alternative Methods:

Regulatory flexibility analysis is not required as there will be no cost for compliance.

2. PUBLIC HEARING

The October 27, 2014, public hearing was convened as published. The public comment period closed at the end of October 27, 2014. The close of the public comment period was posted on the Commission's online rule docket at <http://www.in.gov/nrc/2377.htm>. John Seifert, Director of the Division of Forestry attended the public hearing. No other member of the public was in attendance.

3. PUBLIC COMMENT

The rule proposal was posted on the Commission's online rule docket. No comments were received through the online form or through regular mail regarding the proposed rule amendments.

4. HEARING OFFICERS ANALYSES WITH RECOMMENDATION REGARDING FINAL ADOPTION

In 2006, the General Assembly merged the Classified Forest Program with the Classified Wildlife Habitat Program into the "Classified Forest & Wildlands Program". Several amendments proposed would reflect this merger, along with other technical amendments.

Land may be classified as a forest plantation (IC 6-1.1-6-2), wildlands (IC 6-1.1-6-2.5), or native forest land (IC 6-1.1-6-3) and assessed for purposes of taxation under IC 6-1.1-6. The Division of Forestry's information brochure at <http://www.in.gov/dnr/forestry/4801.htm> provides general information regarding the eligibility requirements for acreage to be entered into this Classified Forest & Wildlands Program as follows:

A Classified Forest and Wildlands tract is an area of at least 10 contiguous acres of forest or non-forest wildlife habitat where the landowner has agreed (by application) to be a good steward of the land and its natural resources. In return, the State of Indiana agrees to see that the assessed value of the land is reduced to \$1 per acre, and taxed on that preferential assessment. The land is managed for timber production, wildlife habitat, and the protection of watersheds, while conserving other natural resources and values.

Eligible lands may be either native forests containing at least 40 square feet of basal area per acre or at least 1,000 timber-producing trees (any size) per acre. Tree plantations with at least 400 well-established timber-producing trees are also eligible to be classified. Wildlands can include natural or planted grasslands, wetlands, native woody vegetation, or areas of open water averaging less than 4 feet in depth or less than 2 acres in size.

The definitions of “district forester” (312 IAC 15-1-6) and “professional forester” (312 IAC 15-1-9) are amended to clarify that a district forester, an employee of the Department, may also qualify as a professional forester. A definition of “wildlife biologist” is also added at 312 IAC 15-1-11. Currently, only a district forester or a professional forester (with approval from the district forester) may prepare the management plan for classified acreage. 312 IAC 15-1-7 is amended to also allow a wildlife biologist, with approval of the district forester, to prepare a management plan.

As part of the management plan, 312 IAC 15-1-7(2) requires adequate description of the acreage being entered into classified status. IC 6-1.1-6-9, which provides standards for assessment of certain forest lands, was amended by P.L. 219-2014, SECTION 2 (HEA 1307). Effective July 1, 2014, IC 6-1.1-6-9(b) allows a professional surveyor to use a geo-referenced¹ aerial photograph in order to prepare a description of the parcel to be classified. Prior to July 1, 2014, IC 6-1.1-6-9(c) provided Commission authority to adopt rules to allow other means to describe and plat a parcel. However, the statute was unclear as to whether a surveyor would need to be used to describe land considered for classification for all means of parcel description. Subsection (c) was amended to provide authority for the Commission to adopt rules to allow other means of “depicting and identifying parcels classified as native forest land, forest plantation, or wildlands...provided that the means do not result in a real property description of the parcel”.

312 IAC 15-3-1 is added to provide an alternative method for describing land to be enrolled in the Classified Forest & Wildlands Program. The alternative method would allow the use of geographic information systems (“GIS”), in accordance with state of Indiana GIS standard, to describe a parcel. Since the alternative method would not result in a real property

¹ “Geo-referenced” means a photo with a minimum horizontal accuracy of plus or minus six (6) meters at one (1) meter resolution. IC 6-1.1-6-0.5

description, this method would not require a surveyor. A surveyor may also use the GIS alternative method to describe a parcel at the landowner's request.

The Division of Forestry's *Fiscal Impact Analysis to State and Local Governments*, states, in part,

The GIS alternative proposed rule would be an administrative benefit to the Division of Forestry. It provides the Division the ability to combine adjoining tracts, develop descriptions for landowners affected by governmental takings or wanting to add small acreages, and correcting existing descriptions with errors at no expense to landowners. These are situations where the revised application is a cost to the landowner and has little or no financial benefit to the landowner.

The Division of Forestry's *Cost-Benefit Analysis*, states, in part,

...
Each application [for classification] currently requires a professional surveyor to complete the description of the land being enrolled. The average cost for the survey work to enroll a tract is \$204 (based on 222 tracts enrolled through a grant program which reimburses a portion of the survey cost).

The GIS alternative to enroll land in the program could potentially reduce the cost to the landowner for enrollment when surveyors and other entities (including the Division of Forestry) can identify land in the program using the GIS alternative.

...
Other cases where the GIS alternative would be similarly beneficial are when landowners want to add small acreages to an existing classified tract or when government project takes a portion of a landowner's tract requiring the landowner to file a revised application.

The proposed amendments to 312 IAC 15, as contained in "Exhibit A," are appropriate and are presented for consideration as to final adoption.

Dated: October 29, 2014

Jennifer M. Kane
Hearing Officer

EXHIBIT A

TITLE 312 NATURAL RESOURCES COMMISSION

Final Rule

LSA Document #14-294(F)

DIGEST

Amends 312 IAC 15-1-1, 312 IAC 15-1-4 through 312 IAC 15-1-9, 312 IAC 15-2-1, and 312 IAC 15-2-4, and adds 312 IAC 15-1-11, which govern forest and resource management, to reflect the merging of the Classified Forest Program and the Classified Wildlife Habitat Program into the Classified Forest and Wildlands Program. Adds 312 IAC 15-3 to allow other means of depicting and identifying parcels classified as native forest land, forest plantation, or wildlands provided that the means do not result in a real property description of the parcel. Effective 30 days after filing with the Publisher.

312 IAC 15-1-1; 312 IAC 15-1-4; 312 IAC 15-1-5; 312 IAC 15-1-6; 312 IAC 15-1-7; 312 IAC 15-1-8; 312 IAC 15-1-9; 312 IAC 15-1-11; 312 IAC 15-2-1; 312 IAC 15-2-4; 312 IAC 15-3

SECTION 1. 312 IAC 15-1-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-1 Purpose

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 1. ~~(a)~~ The purpose of this article is to provide minimum standards of good ~~timber~~ **forest and resource** management for property that is classified as forest plantation land, ~~or~~ native forest land, **or wildland** under IC 6-1.1-6. ~~after June 30, 1990.~~

~~(b) This article does not apply to property classified as forest plantation land or native forest land before July 1, 1990. (Natural Resources Commission; 312 IAC 15-1-1; filed May 19, 1997, 11:30 a.m.: 20 IR 2750; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)~~

SECTION 2. 312 IAC 15-1-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-4 Revocation of certification

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 4-21.5-3-8; IC 6-1.1-6

Sec. 4. (a) The state forester may initiate a proceeding, under IC 4-21.5-3-8, to revoke a ~~certification issued~~ **classified status** under IC 6-1.1-6 for forest plantation land, ~~or~~ native forest land, **or wildland** if the owner violates, or allows the violation by another person of, any of the following:

(1) IC 6-1.1-6.

(2) This article.

(3) The ~~timber~~ management plan established for the real estate and included within the forest plantation ~~or land~~, native forest land, **or wildland**.

(b) The commission is the ultimate authority for the department under this section. *(Natural Resources Commission; 312 IAC 15-1-4; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)*

SECTION 3. 312 IAC 15-1-5 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-5 "Commercial harvest" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 5. As used in this article, "commercial harvest" means the felling or removal of a ~~tree~~ **one (1) or more trees** for sale to, or use ~~of~~, **by**, a person other than the owner. *(Natural Resources Commission; 312 IAC 15-1-5; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)*

SECTION 4. 312 IAC 15-1-6 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-6 "District forester" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 6. As used in this article, "district forester" means an employee of the department who:

(1) ~~holds a bachelor of science degree in forest management or a closely related forestry curriculum from a college or university accredited by the Society of American Foresters;~~ **is a professional forester; and**

(2) is responsible for the administration of IC 6-1.1-6 within designated counties.

(Natural Resources Commission; 312 IAC 15-1-6; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)

SECTION 5. 312 IAC 15-1-7 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-7 "Management plan" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 7. As used in this article, "management plan" means a written document prepared by a district forester, or by a professional forester **or wildlife biologist** and approved by a district forester, which meets the following requirements:

- (1) The plan is prepared in consultation with the owner **or an authorized representative of the owner** and signed by the owner or an authorized representative of the owner.
- (2) The plan adequately describes the **forest plantation land**, native forest land, or ~~forest plantation~~ **wildland** being entered into classified ~~forest~~ status.
- (3) The plan prescribes management practices for the classified ~~forest~~ land that:
 - (A) meet the objectives of the owner; and
 - (B) satisfy IC 6-1.1-6 and this article.
- (4) The plan ~~supports tree growth that is comparable with~~ **promotes sustainable** timber production, **and wildlife habitat management, or** watershed protection **as appropriate to the land type.**

(Natural Resources Commission; 312 IAC 15-1-7; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)

SECTION 6. 312 IAC 15-1-8 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-8 "Owner" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 8. As used in this article, "owner" means a person **or entity** who owns real estate that is classified as forest plantation land, ~~or~~ native forest land, **or wildland** under IC 6-1.1-6. *(Natural Resources Commission; 312 IAC 15-1-8; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)*

SECTION 7. 312 IAC 15-1-9 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-1-9 "Professional forester" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 9. As used in this article, "professional forester" means a person ~~who is not an employee of the department and~~ who holds a bachelor of science degree in forest management or a closely related forestry curriculum from a college or university accredited by the Society of American Foresters. *(Natural Resources Commission; 312 IAC 15-1-9; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)*

SECTION 8. 312 IAC 15-1-11 IS ADDED TO READ AS FOLLOWS:

312 IAC 15-1-11 "Wildlife biologist" defined

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 11. As used in this article, "wildlife biologist" means a person who holds a minimum of a bachelor of science degree in wildlife management or closely related curriculum. *(Natural Resources Commission; 312 IAC 15-1-11)*

SECTION 9. 312 IAC 15-2-1 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-2-1 Minimum standards of good resource management in maintenance of classified lands

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 1. The owner of land classified as a forest plantation under IC 6-1.1-6-2, **wildland under IC 6-1.1-6-2.5**, or a native forest under IC 6-1.1-6-3 shall do each of the following:

- (1) Maintain the land according to its management plan.
- (2) Prevent excessive erosion and control the deposition of sediment off-site.
- ~~(3) Maintain a healthy forest environment.~~

(Natural Resources Commission; 312 IAC 15-2-1; filed May 19, 1997, 11:30 a.m.: 20 IR 2751; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)

SECTION 10. 312 IAC 15-2-4 IS AMENDED TO READ AS FOLLOWS:

312 IAC 15-2-4 Salvage of timber following natural catastrophes

Authority: IC 6-1.1-6-16; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 4. If a sudden and unexpected natural catastrophe occurs, which seriously damages the merchantable trees within a classified ~~forest~~ area, the owner may immediately salvage the trees. *(Natural Resources Commission; 312 IAC 15-2-4; filed May 19, 1997, 11:30 a.m.: 20 IR 2752; readopted filed Jul 28, 2003, 12:00 p.m.: 27 IR 286; readopted filed May 26, 2009, 11:21 a.m.: 20090624-IR-312090155RFA)*

SECTION 11. 312 IAC 15-3 IS ADDED TO READ AS FOLLOWS:

Rule 3. Alternative Parcel Description

312 IAC 15-3-1 Geographic information system alternative

Authority: IC 6-1.1-6-9; IC 14-10-2-4

Affected: IC 6-1.1-6

Sec. 1. (a) The originator of the description and plat may use geographic information systems (GIS), in accordance with the state of Indiana GIS standard, with a county GIS tax parcel layer or a digitized property deed in conjunction with:

- (1) a geo-referenced, digital aerial photo; or
- (2) global positioning system (GPS) points with a minimum of three (3) meter accuracy;

to describe and plat the parcel.

(b) The parcel description must:

- (1) describe parcel boundary by metes and bounds;**
- (2) locate the parcel with reference to a coordinate pair;**
- (3) give the projection and coordinate system used; and**
- (4) identify parcel by:**
 - (A) section;**
 - (B) township;**
 - (C) range; and**
 - (D) county.**

The plat must be at the scale and the format prescribed by the department. All parcel descriptions and plats must be approved by the district forester. A description and plat developed under this rule is not a real property description. (*Natural Resources Commission; 312 IAC 15-3-1*)